

In The Matter of License No. 76544
Issued to: CHARLES E. ROLL, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHARLES E. ROLL, JR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 7 April, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 76544 issued to Charles E. Roll, Jr., upon finding him guilty of misconduct and negligence based upon three specifications alleging in substance that while serving as Master on board the American SS SEAMAGIC under authority of the license above described, from on or about 17 January, 1953, to on or about 30 January, 1953, he wrongfully navigated the vessel without a valid certificate of inspection (misconduct); from on or about 27 June, 1952, to on or about 30 January, 1953, he wrongfully navigated the vessel with insufficient licensed officers aboard (misconduct); on or about 2 February, 1953, at Hoboken, New Jersey, he permitted the fire fighting system on the vessel to be in an unsafe condition in that certain valves in the steam smothering system were inoperative (negligence).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charges and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of two Coast Guard Marine Inspection Officers, the Certificate of Inspection of the SEAMAGIC, and certified copies of extracts from the Official Log Book and Shipping Articles of the SEAMAGIC. It was stipulated that no replacement for the Third Mate was signed on the Shipping Articles at any time.

After counsel for Appellant had completed his opening statement, Appellant testified under oath in his own behalf. There was also placed in evidence a certified copy of an entry in the Official Log book of the SEAMAGIC. Appellant testified that he had repeatedly requested the ship's agents to contact the Coast Guard about the expired Certificate of Inspection; he had signed off the Third Mate because he was sick and Appellant had not thereafter been able to obtain a replacement; and the steam smothering system valves were in operating condition a few days before the date alleged in the specification.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charges had been proved by proof of the three specifications. He then entered the order suspending Appellant's License No. 76544, and all other valid licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

From that order, this appeal has been taken, and it is urged that the decision of the Examiner rests on technicalities and it is not supported by reliable, probative and substantial evidence as required by law. With respect to the individual specifications, it is contended that:

POINT I. "Captain Roll's behavior with regard to the annual inspection was not a dereliction from duty which constitutes misconduct."

At three different ports, Appellant requested his agents to contact the Coast Guard concerning the expired Certificate of Inspection of the SEAMAGIC. It was too late to contact the Coast Guard at San Juan, Puerto Rico, after the ship arrived there at 1830; but a waiver would have been issued and the matter left to the discretion of the Master if the Coast Guard had been notified at that port. Since Appellant made a reasonable effort to comply with the inspection laws and regulations (46 U.S. C. 399; 46 C. F. R. 31.01-15), this was not a willful violation or dereliction of duty resulting in injury, but it was a technical violation which it is not the policy of the Coast Guard to consider as misconduct (46 C. F. R. 2.50-1(b)).

POINT II. "The Examiner committed reversible error in basing his opinion upon evidence which had not been introduced at the hearing. The SEAMAGIC was not deprived of her Third Mate through the consent, fault or collusion of her Master. A substitute Third Mate was obtained at the first opportunity. There was no violation of 46 U. S. C. section 222."

There was uncontradicted testimony by Appellant that the Third Mate was ill during the entire time Appellant was in command; the Mate became unfit for duty because of diarrhea and bleeding; and a qualified replacement was not obtainable at any port until the ship arrived at Albany. Although the Third Mate was signed off by mutual consent, Appellant did not "consent" to the Mate's illness. Therefore, Appellant acted within his statutory rights. (46 U. S. C. 222) in proceeding on the voyage without a replacement when, according to his judgment, the ship was sufficiently manned and Appellant attempted to obtain a replacement. Since there was no American Consul at the port where the Mate was signed off, Appellant used his own judgment as to the Mate's condition despite the opinion of a doctor that the Mate was fit for duty. It was reversible error for the Examiner to use a log entry, which was not in evidence, as a test of the credibility of Appellant's testimony that he did not think he should rely upon the judgment of the doctor who had examined the Mate and declared him fit for duty.

POINT III. "Captain Roll exercised the due diligence and care required of a reasonably prudent shipmaster in inspecting and maintaining the steam smothering system valves in good working order and therefore he was not negligent."

Only one Coast Guard Officer testified regarding the steam smothering valves and his testimony was so equivocal that it cannot support a finding that the condition which he found could have existed for any measurable length of time. He would not say that the valves were rusted or how long it would take for them to get in the condition they were in. The valves were functioning in good order when the system was used to facilitate the discharge of a cargo of molasses by heating it. This refutes the evidence that the valves could not be used.

In conclusion, Appellant states that his unblemished professional reputation as a Master, his personal reputation, a jeopardization of his career, and the loss of earnings during the period of suspension are all at stake; and, therefore, the action of the Examiner constitutes a failure of justice when the serious consequences of his decision are compared with the basic lack of substance and the technicalities upon which his decision rests.

APPEARANCES: Messrs. Dow and Symmers of New York City, by Wilbur
E. Dow, Jr., Esquire, and William Warner, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 10 or 11 May, 1952, Appellant relived the Master of the American SS SEAMAGIC, a tanker, while the ship was at Curacao, Netherlands West Indies. Appellant served continuously as Master of the SEAMAGIC and under authority of his License No. 76544 from this time until 2 February, 1953, inclusive. The ship's foreign voyage which had commenced on 24 February, 1952, was completed on 30 January, 1953, at New York.

On 10 or 11 May, 1952, the Third Mate was treated by a doctor for diarrhea while the ship was at Curacao. He was examined and treated at the next port, which was Buenos Aires, Argentina, on 4 June, 1952; but the doctor declared that he was fit for duty.

The ship went next to Cardon, Venezuela, where the Third Mate received additional medical treatment from a doctor ashore who also was for the opinion that the Third Mate was fit for duty. Neither the nature of the Third Mate's illness nor nay of the medical treatment given to his was entered in the ship's Official Log Book. Without consulting the doctor, Appellant signed off the Third Mate by mutual consent on 27 June, 1952, while the ship was still at Cardon. The Third Mate was repatriated to New York City at the shipowner's expense. Appellant had been told by the ship's agent that no replacement was available at Cardon so Appellant sent a letter to the owners requesting another Third Mate. Appellant did not promote another member of the crew to Third Mate because he did not think that any of them was qualified to stand bridge watches. Despite attempts by Appellant to obtain to obtain a replacement at various ports, the Third Mate was not replaced prior to the arrival of the ship at New York on 24 or 25 January, 1953.

The SEAMAGIC's annual Certificate of Inspection required, among other things, that the ship should carry a Chief Mate, Second Mate and Third Mate as licensed officers in addition to the

Master. After the Third Mate's departure, there remained only a Chief Mate and Second Mate who alternated watches, with the assistance of the Appellant at times, for the remainder of the foreign voyage which included twelve crossings of the Atlantic Ocean.

On 21 December, 1952, the Certificate of Inspection of the SEAMAGIC expired while the ship was at panama. After stopping at three intermediary foreign ports, the ship arrived at Guayanilla, Puerto Rico, on 13 January, 1953. Although there was no Coast Guard Marine Inspection Office at this port, which is on the opposite side of the island from San Juan, Appellant requested the ship's agent to notify the Coast Guard that the Certificate of Inspection had expired. There was a Marine Inspection office at San Juan. A cargo of molasses was taken aboard at Guayanilla. Appellant did not hear anything, about the Certificate of Inspection, from the agent before the ship departed on 17 January and proceeded to San Juan where she arrived at 1830 on the same date. Again, Appellant asked the agent to contact the Coast Guard but this had not been done prior to 2200 when the SEAMAGIC got underway for Albany, (New York, after receiving bunker oil aboard.

The Coast Guard office at Albany, New York, was not contacted about the Certificate of Inspection while the ship was at this port from 25 to 30 January, 1953, during which time her cargo of molasses was discharged. The ship's cargo heating system and steam smothering system were used to soften the molasses so that it could be pumped ashore. The latter system is part of the fire fighting equipment of the ship.

On 30 January, 1953, the SEAMAGIC moved to Hoboken, New Jersey, for the annual inspection. On the following morning, a Coast Guard Marine Inspection Officer boarded the vessel and during the course of his inspection he examined the steam smothering system valves. The Inspector found that there were about ten of these valves which he could not open with his hands. The valves were frozen by a coating which appeared to be something other than rust.

there is no record of prior disciplinary action having been taken against Appellant. He is 32 years old and has had a Master's license for about 9 years.

OPINION

POINT I.

The SEAMAGIC was required to have on board an effective Certificate of Inspection issued after satisfactory completion of an annual inspection, 46 United States Code 391, 399. And 46 Code of Federal Regulations 31.31-15 states that an application in writing for the annual inspection of a tank vessel "shall be made by the master, owner, or agent to the Officer in Charge, Marine Inspection, at any local marine inspection office, U. S. Coast Guard, where the vessel may be operating." There is no evidence that Appellant or an agent prepared such a written application to be submitted to the Marine Inspection Office at San Juan of Albany. As an alternative, Appellant could have requested a waiver as provided for in 46 Code of Federal Regulations 154.01. If such a waiver had been applied for and obtained, then violation of the law and regulations would have

been avoided during the period of time alleged in the specification. Appellant testified that he intended to request a waiver at San Juan but it was too late when the ship arrived at that port and this action was never taken.

As Master of the vessel, it remained Appellant's responsibility to comply with the inspection requirements if the ship's agents failed him. Probably, Appellant could have carried out this duty if he had delayed the continuation of the voyage until the following day. Nevertheless, this was a definite violation of the inspection laws and it cannot be dismissed on the speculative ground that since the Marine Inspection Officer at San Juan would probably have issued a waiver then this was merely a technical offense which should be overlooked. In considering whether a waiver would have been issued, it is well to remember that the ship was heading for heavily trafficked waters while below her complement in licensed officers. In addition, it seems that the Coast Guard could have been contacted at San Juan as easily as someone there had been reached in order to make arrangements for taking bunker oil on board.

Regardless of the absence of any resultant injury, this was clearly an act of misconduct by Appellant.

POINT II.

As stated in the findings of facts, the Certificate of Inspection called for three Mates and only two were on board for the duration of the voyage after the Third Mate signed off the articles by mutual consent at Cardon on 27 June, 1952. I do not consider that the reference by the Examiner to a log entry which was not placed in evidence was reversible error because there is considerable substantial evidence in the record to support the conclusion that the lack of an officer was primarily due to the fact that Appellant acted improperly when he released the Third Mate by mutual consent at Cardon.

Title 46 United States Code 222 provides that a master may proceed on the voyage after the vessel has been deprived of the services of any number of the crew "without the consent, fault, or collusion of the master, owner or any person interested in the vessel . . . if, in the judgment of the master, she is sufficiently manned for such voyage." But regardless of whether the mutual consent discharge was necessarily "consent" by Appellant within the meaning of 46 U.S.C. 222, the fact remains that Appellant permitted the Third Mate to leave, without a replacement, after at least two doctors had decided that the Third Mate was "fit for duty." Also, there were no entries in the Official Log Book as required by 46 U.S.C. 201 which states, in part, that every case of illness to a member of the crew shall be entered in the Official Log Book including the nature of the illness and the medical treatment. These factors present very strong evidence upon which to base the inference that the Third Mate should not have been signed off the Articles. And Appellant has presented nothing to refute this except his own opinion that the Third Mate was very ill. Such evidence is not sufficient to rebut the substantial evidence to the contrary, even admitting the truth of Appellant's testimony as to his personal opinion of the Mate's condition.

In view of the conclusion that Appellant acted improperly in signing off the Third Mate on

27 June, Appellant was guilty of misconduct while navigating the vessel without a Third Mate on board. Therefore, it is not necessary to consider whether Appellant exercised reasonable judgment in determining that the vessel was sufficiently manned to proceed without a Third Mate. It follows that Appellant's subsequent attempts to obtain a replacement do not merit any consideration except in mitigation of the offense.

POINT III.

The Marine Inspection Officer testified that he tested the steam smothering valves on a Saturday, the morning after the ship arrived at Hoboken. This must have been on 31 January, 1953, which is sufficient to meet the allegation of "on or about 2 February, 1953." The valves might have been operated as late as 30 January, 1953, in assisting to discharge the cargo of molasses. Regardless of how short the period of time was during which the valves were inoperative, it was an offense of negligence, to some extent, on the part of Appellant for permitting part of the ship's fire fighting equipment to be unavailable for use for any length of time.

There is no direct conflict between the testimony of the Coast Guard Officer and Appellant. The former stated that he could not open the valves on Saturday; and the latter said that they were used prior to Saturday. The testimony of the two men was substantially in accord with respect to the condition of the valves on Saturday. Appellant stated that a Ship's Officer was freeing up some of the valves at the time the Inspector told Appellant that some of the valves were frozen.

CONCLUSION

There are several mitigating circumstances which I have considered - Appellant's attempt to contact the Marine Inspection Office at Puerto Rico through the ship's agent, his efforts to obtain a replacement for the Third Mate, the fact that there was some basis for the release of the Third Mate since he had received medical treatment, the probable short period of time during which the steam smothering valves were inoperative, and Appellant's prior unblemished record during a period of about 16 years on merchant vessels of the United States. For these reasons, the order is modified to read as follows:

ORDER

That License no. 76544, and all other valid licenses and documents issued to Charles E. Roll, Jr. by the United States Coast Guard or its predecessor authority, are suspended for a period of three (3) months less any time (since Appellant surrendered his License No. 76544 to the Coast Guard) during which Appellant has not had an effective temporary license in his possession. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed within twelve (12) months of the date this order becomes effective by service upon Appellant.

If this probation is violated, the order for which probation was granted shall become effective with respect to all licenses and documents here involved, and also any license or document

acquired by Appellant during the period of probation, at such time as designated by any Coast Guard Examiner, finding the violation, and may be added to or form a part of any additional order which is entered by such Hearing Examiner.

As so MODIFIED, the order of the Examiner dated at New York, New York, on 7 April, 1953, is AFFIRMED.

MERLIN O'NEILL
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 18th day of December, 1953.